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HOUSE BILL 384

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

R. David Pederson

AN ACT

**RELATING TO CRIMINAL SENTENCING; PROVIDING INCREASES IN A
BASIC SENTENCE OF IMPRISONMENT WHEN A CRIME IS INTENTIONALLY
COMMITTED AGAINST CERTAIN PERSONS OR THEIR PROPERTY; ENACTING
A NEW SECTION OF THE CRIMINAL SENTENCING ACT.**

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**Section 1. A new section of the Criminal Sentencing Act
is enacted to read:**

**"NEW MATERIAL NONCAPITAL FELONIES, MISDEMEANORS OR
PETTY MISDEMEANORS AGAINST A PERSON OR HIS PROPERTY BECAUSE OF
THE ACTUAL OR PERCEIVED RACE, RELIGION, COLOR, NATIONAL
ORIGIN, ANCESTRY, GENDER OR SEXUAL ORIENTATION OF THE PERSON--
ALTERATION OF BASIC SENTENCE--SUSPENSION AND DEFERRAL
LIMITED. --**

A. When a separate finding of fact by the court or

underscored material = new
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1 jury shows that an offender committed a petty misdemeanor in
2 which a person was intentionally injured or his property was
3 intentionally damaged because of the actual or perceived race,
4 religion, color, national origin, ancestry, gender or sexual
5 orientation of that person, whether or not the offender's
6 belief or perception was correct, the basic sentence of
7 imprisonment prescribed for the offense in Section 31-19-1
8 NMSA 1978 may be increased by thirty days not to exceed one
9 hundred eighty days. The sentence imposed pursuant to the
10 provisions of this subsection shall be the first thirty days
11 served and may be suspended or deferred.

12 B. When an offender commits a second or subsequent
13 petty misdemeanor in which a person was intentionally injured
14 or his property was intentionally damaged because of the
15 actual or perceived race, religion, color, national origin,
16 ancestry, gender or sexual orientation of that person, whether
17 or not the offender's belief or perception was correct, the
18 basic sentence of imprisonment prescribed for the offense in
19 Section 31-19-1 NMSA 1978 may be increased by sixty days not
20 to exceed one hundred eighty days. The sentence imposed
21 pursuant to the provisions of this subsection shall be the
22 first sixty days served and may be suspended or deferred.

23 C. When a separate finding of fact by the court or
24 jury shows that an offender committed a misdemeanor in which a
25 person was intentionally injured or his property was

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1 intentionally damaged because of the actual or perceived race,
2 religion, color, national origin, ancestry, gender or sexual
3 orientation of that person, whether or not the offender's
4 belief or perception was correct, the basic sentence of
5 imprisonment prescribed for the offense in Section 31-19-1
6 NMSA 1978 may be increased by ninety days not to exceed three
7 hundred sixty-four days. The sentence imposed pursuant to the
8 provisions of this subsection shall be the first ninety days
9 served and may be suspended or deferred.

10 D. When an offender commits a second or subsequent
11 misdemeanor in which a person was intentionally injured or his
12 property was intentionally damaged because of the actual or
13 perceived race, religion, color, national origin, ancestry,
14 gender or sexual orientation of that person, whether or not
15 the offender's belief or perception was correct, the basic
16 sentence of imprisonment prescribed for the offense in Section
17 31-19-1 NMSA 1978 may be increased by one hundred eighty days
18 not to exceed three hundred sixty-four days. The sentence
19 imposed pursuant to the provisions of this subsection shall be
20 the first one hundred eighty days served and may be suspended
21 or deferred.

22 E. When a separate finding of fact by the court or
23 jury shows that an offender committed a noncapital felony in
24 which a person was intentionally injured or his property was
25 intentionally damaged because of the actual or perceived race,

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1 religion, color, national origin, ancestry, gender or sexual
2 orientation of that person, whether or not the offender's
3 belief or perception was correct, the basic sentence of
4 imprisonment prescribed for the offense in Section 31-18-15
5 NMSA 1978 may be increased by one year. The sentence imposed
6 pursuant to the provisions of this subsection shall be the
7 first year served and may be suspended or deferred. When the
8 offender is a youthful offender, the sentence imposed pursuant
9 to the provisions of this subsection may be increased by one
10 year.

11 F. When an offender commits a second or subsequent
12 noncapital felony in which a person was intentionally injured
13 or his property was intentionally damaged because of the
14 actual or perceived race, religion, color, national origin,
15 ancestry, gender or sexual orientation of that person, whether
16 or not the offender's belief or perception was correct, the
17 basic sentence of imprisonment prescribed for the offense in
18 Section 31-18-15 NMSA 1978 may be increased by three years.
19 The sentence imposed pursuant to the provisions of this
20 subsection shall be the first three years served and may be
21 suspended or deferred. When the offender is a serious
22 youthful offender or a youthful offender, the sentence imposed
23 pursuant to the provisions of this subsection may be increased
24 by three years.

25 G. If the case is tried before a jury and if a

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1 prima facie case has been established showing that in the
2 commission of the offense a person was intentionally injured
3 or his property was intentionally damaged because of the
4 actual or perceived race, religion, color, national origin,
5 ancestry, gender or sexual orientation of that person, whether
6 or not the offender's belief or perception was correct, the
7 court shall submit the issue to the jury by special
8 interrogatory. If the case is tried by the court and if a
9 prima facie case has been established showing that in the
10 commission of the offense a person was intentionally injured
11 or his property was intentionally damaged because of the
12 actual or perceived race, religion, color, national origin,
13 ancestry, gender or sexual orientation of that person, whether
14 or not the offender's belief or perception was correct, the
15 court shall decide the issue and shall make a separate finding
16 of fact regarding the issue. "

17 Section 2. EFFECTIVE DATE. --The effective date of the
18 provisions of this act is July 1, 1999.